

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of the  
License of Tamika Mwaura to Provide  
Family Child Care under Minnesota Rules,  
parts 9502.0300 to 9502.0445

**FINDINGS OF FACT,  
CONCLUSIONS  
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on June 3, 2010, at the Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota 55033. The hearing record closed at the end of the hearing on June 3, 2009.

Margaret M. Horsch, Assistant Dakota County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota 55033, appeared at the hearing as attorney for the Minnesota Department of Human Services (the "Department") and the Dakota Social Services Department (the "County"). The Licensee, Tamika Mwaura, appeared on her own behalf, without legal counsel.

**STATEMENT OF THE ISSUES**

Should the Licensee's family child care license be revoked because she violated statutes and rules that are applicable to family child care licensees?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Ms. Tamika Mwaura, Licensee, has been licensed to provide family child care in her Apple Valley, Minnesota, home since September 6, 2007.<sup>1</sup> Licensee's initial Class A license permitted her to care for a total of ten children. Of those ten no more than six may be under school age. Of the six under school age allowed, no more than three may be infants or toddlers. Of the three infants and toddlers, no more than two may be infants.<sup>2</sup>

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<sup>1</sup> Testimony of Laurie Haenke, County child care licensor.

<sup>2</sup> *Id.*; Minn. R. 9502.0367.

2. On May 1, 2008, Licensee was providing family child care for two infants and two toddlers.<sup>3</sup> After Licensee's food program representative pointed out to her that she was over-capacity for her license, Licensee reported to the County that she was over-capacity.<sup>4</sup> Licensee was issued a Correction Order for the over-capacity violation.<sup>5</sup>

3. Licensee signed the Correction Order on May 2, 2008. As an accommodation to Licensee, the County changed Licensee's license to a Specialized Infant and Toddler Family Day Care, or B-2, license. The B-2 license reduced the overall number of children Licensee is permitted to care for to six. However, the B-2 license permits Licensee to care for four children under school age, no more than two of which may be infants.<sup>6</sup>

4. Licensee did not post the May 1, 2008, correction order on the bulletin board in her home.<sup>7</sup>

5. In May 2008, Licensee enrolled two under school age brothers in her daycare.<sup>8</sup> The addition of these two brothers placed Licensee over her licensed capacity by two for under school age children.<sup>9</sup>

6. On May 19, 2008, the County licensor discussed with Licensee the specific requirements and capacity limits of the B-2 license.<sup>10</sup>

7. The County licensor visited Licensee's daycare on June 16, 2008, and discovered that Licensee had been over capacity for a three-week period ending June 3, 2008. In addition, on that day Licensee: had not posted the May 1, 2008, correction order; was caring for five children under school age; missing documentation for immunization and admission and arrangement documentation on one child that was in care on June 13, 2008; and had an uncovered electrical outlet in the playroom.<sup>11</sup> The County licensor issued Licensee three correction orders on June 17, 2008, for the foregoing violations.<sup>12</sup> Licensee described how the violations were corrected and signed the three correction orders on June 23, 2008.<sup>13</sup>

8. Based on written reports submitted to the County food program by Licensee for food reimbursement in June of 2008, the County received a direct report

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<sup>3</sup> *Id.*; Exhibit 2.

<sup>4</sup> Ex. 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; Test. of L. Haenke.

<sup>7</sup> Ex. 3; Test. of L. Haenke.

<sup>8</sup> Test. of L. Haenke; Ex. 3.

<sup>9</sup> *Id.*

<sup>10</sup> Test. of L. Haenke; Ex. 5.

<sup>11</sup> *Id.*

<sup>12</sup> Ex. 3.

<sup>13</sup> *Id.*

from the County food program that Licensee was again over her licensed capacity by one under school age child on June 23, 24, and 25, 2008.<sup>14</sup>

9. The County licensor and the licensor's supervisor visited Licensee's daycare on July 14, 2008, on a relicensing visit. The County licensing workers observed an adult male caring for an infant. The adult male has not completed Sudden Infant Death Syndrome ("SIDS") and Shaken Baby training.<sup>15</sup>

10. On July 14, 2008, the County issued a correction order to Licensee for the over-capacity violations of June 23, 24, and 25, 2008, and for utilizing an infant caregiver that had not completed SIDS/Shaken Baby training.<sup>16</sup> Licensee described how the violations were corrected and signed the correction order on July 15, 2008.<sup>17</sup>

11. On July 16, 2008, the County recommended in a letter to the Department that Licensee be placed on a one-year conditional license with the following six conditions: that Licensee have additional monitoring visits; that Licensee repeat rule orientation; that Licensee's license return to a Class A license; that Licensee submit weekly attendance records; that Licensee follow and comply with all applicable rules and laws; and that Licensee receive no variances.<sup>18</sup>

12. On September 23, 2008, the Department issued an Order to Forfeit a Fine and Order of Conditional License.<sup>19</sup> Licensee was ordered to pay a \$200.00 fine for utilizing an adult caregiver to care for an infant before he had completed SIDS/Shaken Baby training.<sup>20</sup> The Conditional License contained the following five conditions:

1. You follow and comply with all applicable Minnesota Rules and Laws.
2. No variances to age distribution or capacity will be granted during the conditional period.
3. You must have parents sign children in and out each day and you must submit these records, along with daily attendance records, to Dakota County by the 5<sup>th</sup> of each month for the previous month, beginning **October 5, 2008**. The daily attendance records must include the name and date of birth of each child in your care.
4. You complete two hours of additional training by **December 26, 2008**. The training is in addition to the annual training requirements as listed in Minnesota Statutes, section 245A.50. The training must

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<sup>14</sup> Test. of L. Haenke.

<sup>15</sup> *Id.*; Test. of William Hess, County licensing supervisor; Ex. 4.

<sup>16</sup> *Id.*

<sup>17</sup> Ex. 4.

<sup>18</sup> Ex. 5.

<sup>19</sup> Ex. 6.

<sup>20</sup> *Id.*

be in the areas of family child care orientation and licensing rule review and through Dakota County Social Services. Prior to attending training, you must obtain approval from Dakota County Social Services that the training is appropriate. You must submit documentation of your attendance to Dakota County Social Services

5. You must either provide a copy of the Order of Conditional License to parents of children in care or document that all parents have been given an opportunity to review the Order of Conditional License. You must obtain parent signatures of each currently enrolled child, indicating they have either received a copy of the conditional order or had an opportunity to review the conditional order. You must provide this documentation to Dakota county Social Services **by October 10, 2008**. For new families, you must submit documentation of compliance with this term to Dakota County Social Services **within 5 days of any child's admission to your child care program.**<sup>21</sup>

13. Licensee did not appeal any of the Correction Orders.<sup>22</sup> Licensee did not appeal the Order to Forfeit a Fine/Order of Conditional License.<sup>23</sup>

14. Licensee did not submit to the County by October 10, 2008, the required documentation containing the signatures of the parents of enrolled children showing compliance with condition number five of the Conditional License.<sup>24</sup>

15. The parents of two children born in January of 2009 met with Licensee in late 2008 regarding the future enrollment of their infants in Licensee's daycare. Neither set of parents was shown or given a copy of Licensee's Order to Forfeit a Fine/Order of Conditional License.<sup>25</sup>

16. The County Licensur visited Licensee's daycare on February 24, 2009, and discussed the fact that the County had not received the documentation of Licensee's compliance with condition number five. Licensee told the Licensur that she thought that the County had given all of the parents copies of the Order to Forfeit a Fine/Order of Conditional License. The Licensur reminded Licensee that it was the Licensee's responsibility to provide the information to the parents and that it was Licensee's responsibility to secure the signatures of all of the parents and submit them to the County. Licensee told the Licensur that she would obtain the signatures and send them in with her next monthly enrollment due March 5, 2009.<sup>26</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> Test. of L. Haenke.

<sup>23</sup> *Id.*

<sup>24</sup> Test. of L. Haenke & W. Hess.

<sup>25</sup> Test. of Colleen Schreffler and Mandyleigh Smoot.

<sup>26</sup> Test. of L. Haenke.

17. On March 2, 2009, Licensee, by facsimile, sent the County a hand-written document that she had prepared and signed, containing the purported initials of six parents, including the parents of the two infants born in January 2009 that were not yet attending Licensee's daycare program.<sup>27</sup> The names of the four parents of the two new infants were listed, but the initials attributed to them were not made by them.<sup>28</sup>

18. The first newly enrolled infant that was born in January of 2009 began being cared for by Licensee in the middle of April 2009.<sup>29</sup> The other enrolled infant that was born in January of 2009 began being cared for in the middle of May 2009.<sup>30</sup>

19. Licensee did not submit to the County within five days of the enrollment of two infants the required documentation containing the signatures of the parents of newly enrolled children, showing compliance with condition number five of the Conditional License.<sup>31</sup>

20. The purpose of condition number five of Licensee's conditional license is to ensure that the parents of prospective child care enrollees can make an informed decision on whether or not to enroll their child with Licensee.<sup>32</sup>

21. Neither set of parents of the infants born in January 2009 would have utilized Licensee as a caregiver for their children had they been aware of Licensee's Order to Forfeit a Fine/Order of Conditional License.<sup>33</sup>

22. The parents of the two infants born in January 2009 first learned of Licensee's Order to Forfeit a Fine/Order of Conditional License on or about September 3, 2009, after speaking on the telephone with the County licensor. The mothers of the two infants had looked on the Department website and saw information indicating that Licensee was not permitted to transport children under the age of nine. The mother of each infant spoke with the County licensor individually, and each learned that the transportation information was incorrect, but learned for the first time about Licensee's conditional license. Neither set of parents returned their child to Licensee's care.<sup>34</sup>

23. The County licensor and the mothers discussed the February 25, 2009, document submitted by Licensee. After each receiving a copy of the February 25, 2009, document created by Licensee from the County, the mothers of the two infants born in January 2009 each assured the Licensor and sent written confirmation to the County that they had not seen it before and had not signed or initialed it.<sup>35</sup>

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<sup>27</sup> *Id.*; Ex. 1.

<sup>28</sup> *Id.*; Test. of C. Schreffler and M. Smoot.

<sup>29</sup> Test. of M. Smoot.

<sup>30</sup> Test. of C. Schreffler.

<sup>31</sup> Test. of L. Haenke.

<sup>32</sup> *Id.*

<sup>33</sup> Test. of C. Schreffler and M. Smoot.

<sup>34</sup> Test. of L. Haenke, C. Schreffler and M. Smoot.

<sup>35</sup> *Id.*

24. One parent considered Licensee's care of her infant adequate, although she had expressed several concerns about Licensee's care of her child, including: Licensee's placement of the infant on its stomach to sleep; Licensee leaving the child to be cared for by someone unknown to the parent; and Licensee placing the infant into a pack-and-play in a dark room within 10 minutes of the parent dropping off the child at Licensee's daycare.<sup>36</sup>

### **Procedural Findings**

25. On September 23, 2009, the County recommended by letter to the Department that Licensee's family child care license be revoked due to her violation of the conditional license, her repeated history of violations that led to the conditional license, and Licensee's submission of forged parent acknowledgments.<sup>37</sup>

26. On February 23, 2010, the Department issued an Order of Revocation to Licensee, stating the legal and factual bases for the revocation of her child family child care license.<sup>38</sup>

27. Licensee made a timely appeal for a hearing on the disqualification decision and the license revocation.<sup>39</sup>

28. On March 4, 2010, the Department issued a Notice of and Order for Hearing scheduling a contested case hearing on June 3, 2010.<sup>40</sup>

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Human Services are authorized to consider the appeal of the revocation of a child family child care license decision, pursuant to Minn. Stat. §§ 14.50, 245A.06, 245A.07, subd. 3(a), and 245A. 08.

2. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

3. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

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<sup>36</sup> Test. of M. Smoot.

<sup>37</sup> Ex. 7.

<sup>38</sup> Ex. 8.

<sup>39</sup> Notice and Order for Hearing.

<sup>40</sup> *Id.*

4. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof for alleged licensing violations first lies with the Commissioner, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.

5. Subdivision 3 of Minn. Stat. § 245A.06, regarding Failure to Comply with a Correction Order and Conditional License provides in applicable part as follows:

If the commissioner finds that the . . . license holder has not corrected the violations specified in the correction order or conditional license, the commissioner may impose a fine and order other licensing sanctions pursuant to section 245A.07.

6. The Department has established reasonable cause to believe that Licensee violated Minn. Stat. § 245A.06, subd. 3, by failing to comply at all times with the September 30, 2008, Order to Forfeit a Fine/Order for Conditional License by failing to comply with condition number five.

7. Licensee failed to prove by a preponderance of the evidence that she was in full compliance with Minn. Stat. § 245A.06, subd 3, and the September 30, 2008, Order to Forfeit a Fine/Order for Conditional License, at the times that the Department alleged the violations occurred.

8. The Department established by a preponderance of the evidence that the February 25, 2008, document created by and submitted to the County by Licensee was fraudulent.

9. Minn. Stat. § 245A.04 provides in applicable part:

Subd. 6. **Commissioner's evaluation.** Before issuing, denying, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder. The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in chapter 245C.

10. As provided in Minn. Stat. §§ 245A.04, subd. 6 and 245C.16, the Department considered facts, conditions, and circumstances concerning the program's

operation, the well being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the license holder.

11. Minn. Stat. § 245A.07, subd. 1, requires the Department to consider “the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights” of those persons in a licensee’s program before applying sanctions under Minn. Stat. § 245A.07.

12. The Department, in the February 23, 2010, Order of Revocation, considered the nature, chronicity, and severity of the alleged violations of rule and the effects of the violations on the health, safety and rights of the family child care children in Licensee’s program.

13. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

14. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends that the Department’s decision to revoke the child family child care license of Tamika Mwaura be **AFFIRMED**.

Dated: July 1, 2010

s/M. Kevin Snell

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M. Kevin Snell

Administrative Law Judge

Reported: Digitally recorded  
No transcript prepared



## NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. Under Minn. Stat. §§ 14.61, the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

The relevant evidence presented in this case is virtually undisputed. There was sufficient indicia of reliability, through the testimony of parents, some corroborating testimony by the Licensee, testimony and statements of experienced licensors regarding the conclusions in the investigation reports and correction orders, to be given greater overall weight and credibility by the Administrative Law Judge than Licensee's conflicting testimony.

The Administrative Law Judge has determined that the Department considered "the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program."<sup>41</sup> The Department also considered "the facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the ... license holder."<sup>42</sup> Although Licensee's care of one child was considered adequate by a parent, the parent had several material concerns. It is

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<sup>41</sup> Minn. Stat. § 245A.07, subd. 1.

<sup>42</sup> Minn. Stat. § 245A.04, subd. 6.

noteworthy that there was no other evidence of support for the Licensee submitted by persons served by the program.

The Administrative Law Judge concludes that Licensee's violation of her conditional license and the submission of a fraudulent document are serious enough that, in order to protect the well being of family child care children, revocation is an appropriate and necessary sanction. It is crucial to the integrity of the family child care system that parents of infants, and all children for that matter, have full knowledge of all relevant facts so that they can make intelligent and fully informed decisions regarding the care of their precious children. Licensee deliberately sought to deceive parents and the licensing authorities in this matter. Licensee offered no plausible explanation for submission of the fraudulent February 25, 2009, document. She did not dispute the testimony of the witnesses. Finally, Licensee offered no assurances that her repeated violations of age distribution levels set forth in her license will not happen again in the future.

For all of these reasons, the Administrative Law Judge does recommend that the revocation of Licensee's family child care license be affirmed.

**M. K. S.**